

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Robert Leon Russell**  
Docket No. **276362**  
L.C. No. **05-128424-FH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The delayed application for leave to appeal filed on February 23, 2007, is DISMISSED for lack of jurisdiction because it was not filed within 12 months of the February 10, 2006, judgment of sentence as required by MCR 7.205(F)(3). Furthermore, the second exception found in MCR 7.205(F)(4) was not satisfied because the postjudgment motion was not filed within six months of the judgment of sentence. Regardless of the title on the postjudgment motion, it was not filed as a motion for relief from judgment since defendant still had a direct appeal available when the motion was filed. See MCR 6.501. Neither this application for leave to appeal, nor the trial court's decision on the motion addressed the motion as if it was a legitimate motion for relief from judgment.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR - 1 2007

Date

*Sandra Schultz Mengel*

Chief Clerk